

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
Civil Action No. 08-4395

RECEIVED

DEC 12 2008

Attest: _____ M
WILLIAM F. WALSH
CLERK

In Regard to the Matter of:

Bayside State Prison
litigation

JULIO ANDRIAL

OPINION/REPORT
OF THE
SPECIAL MASTER

-vs-

WILLIAM H. FAUVER, et al,

Defendants.

* * * * *
TUESDAY, NOVEMBER 18, 2008
* * * * *

BEFORE THE HONORABLE JOHN W. BISSELL, SPECIAL MASTER

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Transcript of proceedings in the above
matter taken by Theresa O. Mastroianni, Certified
Court Reporter, license number 30X100085700, and
Notary Public of the State of New Jersey at the
United States District Court House, One Gerry Plaza,
Camden, New Jersey, 08102, commencing at 1:00 PM.

MASTROIANNI & FORMAROLI, INC.

Certified Court Reporting & Videoconferencing

251 South White Horse Pike

Audubon, New Jersey 08106

856-546-1100

1

2 **A P P E A R A N C E S:**

3

4

5

ROSELLI & GRIEGEL, PC
BY: JAMES LAZZARO ESQUIRE
1337 STATE HIGHWAY 33
HAMILTON SQUARE, NEW JERSEY 08690
609-586-2257
ATTORNEYS FOR THE DEFENDANTS

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 JUDGE BISSELL: I'm reopening
2 proceedings for the purpose of delivering a bench
3 opinion in the complaint brought by Julio Andrial,
4 A-N-D-R-I-A-L, docket number 08-4395.

5 This opinion/report is being issued
6 pursuant to the directives of Order of Reference to a
7 Special Master and the Special Master's Agreement and
8 the guiding principles of law which underlie this
9 decision to be applied to the facts upon which it is
10 based as set forth in the jury instructions in the
11 Walker and Mejias jury charges to the extent
12 applicable to the allegations of Mr. Andrial.

13 As finalized after review under Local
14 Civil Rule 52.1, this transcript will constitute the
15 written report required under paragraph seven of the
16 Order of Reference to a Special Master.

17 Mr. Andrial was housed in F Unit at the
18 time of the death of Officer Baker and that, of
19 course, was the unit which Mr. Baker supervised and
20 which was evacuated to the gym on the very day of
21 that event.

22 I've reviewed at length the testimony
23 of Mr. Andrial which essentially concerns three
24 incidents in the course of his incarceration. The
25 first of these on or about July 30th, the date of

1 Baker's death, is recounted first at pages 17 through
2 21 of the transcript of September 29th, 2008, the
3 date he testified. Those are events allegedly
4 occurring outside of his cell. The second segment
5 can be found, among other places I'm sure, at page 26
6 of that transcript involving his allegations of
7 mistreatment in the gym on the same day. And the
8 third relating to a beating which he allegedly
9 received in B Unit on or about the 23rd of September
10 after the close of the lockdown but apparently upon
11 the discovery of weapons or altered objects that
12 could be considered weapons in his cell. B Unit was a
13 detention unit for those facing charges or otherwise
14 involved in inappropriate activity.

15 I'm not going to dwell at length on his
16 testimony because, frankly, I find that it has too
17 many holes in it. And, furthermore, it's punctuated,
18 if that's the way to put it, with such a number of
19 improbabilities that at the very least he has failed
20 to sustain his burden of proof of the alleged conduct
21 against him by a preponderance of the believable
22 evidence.

23 All of the events which allegedly
24 occurred in the vicinity of his cell on the 30th of
25 July, as he states it, occurred outside of the cell

1 itself on the tier in full view of others including
2 the duty officer.

3 Now, I'm not going to say that's
4 impossible, but frankly, it's not inherently
5 credible. He talks in terms of being beaten with the
6 night sticks, as they've come to be called, carried
7 by the SOGs and having been kicked at the time and so
8 forth.

9 There have been occasions in the course
10 of these hearings and probably will be in the future
11 where I've made a determination that where this type
12 of activity takes place within the cell itself and,
13 therefore, less likely to be visible to persons other
14 than the perpetrators, it has a greater likelihood of
15 having taken place. But in a situation like this, in
16 full view, on the very day of the murder of Officer
17 Baker, Mr. Andrial's testimony is inherently
18 incredible. And I find that he's failed to establish
19 that it, in fact, happened.

20 He talks in terms of assaults in the
21 gym and once again it appears at page 26 among
22 others, I'm not going to recite them here at length.
23 I'll incorporate that testimony by reference only to
24 demonstrate his characterizations. However, it's
25 perfectly clear that there is absolutely no reference

1 to this event in the answers that he gave to
2 interrogatories appearing at D-411 and also in the
3 supplemental answers to interrogatories in D-412. In
4 each case they make reference to the gym, but they
5 refer only to, in the case of D-411, "they took me to
6 the gym and made me sit on the hard floor execution
7 style for more than 14 hours straight."

8 Similarly, he testified in his answer
9 to supplemental interrogatories, D-412, "I was forced
10 to sit down for approximately 14 hours in the
11 gymnasium and while I was there I was not allowed to
12 go to the bathroom and I urinated in my pants." So
13 once again, no allegations of having been beaten in
14 the gym as he testified to here in open court.

15 He testified also, as I said, to the
16 alleged events on the 23rd of September when he was
17 transferred from F Unit to B Unit because certain
18 weapons had been found in his cell. And once again,
19 although the interrogatories, D-411 and 412, are
20 sufficiently comprehensive to have elicited an answer
21 reflecting that incident, they are completely silent
22 on the subject.

23 Furthermore, the report of Sergeant
24 Roberts which appears as D-413, talks in terms of the
25 events in question, describes the weapons that were

1 siezed and mentions that Mr. Andrial was transferred
2 to B Unit without incident.

3 It's just not, once again, sufficiently
4 credible for Mr. Andrial to describe now that alleged
5 beating in B Unit. Now, he may or may not have
6 testified to those events at his deposition also
7 taken several years after the event. I don't
8 consider that to be particularly significant here.
9 But it's a fact that it has no mention in his
10 interrogatory answers. Additionally, the alleged
11 events of September 23rd are refuted by alleged
12 participants Roberts, Keiser and Sprenger.

13 I consider also the inherent lack of
14 credibility regarding events at his cell, (supposedly
15 in plain view on the wing) and in the gym,
16 (supposedly in plain view of a number of civilian
17 people from administration, from the ombudsman, from
18 Internal Affairs who would have been particularly
19 vigilant on this day, the very beginning of the
20 lockdown period). Mr. Andrial just has not sustained
21 his burden of proof.

22 Finally, although not every item of
23 evidence has been discussed in this opinion/report,
24 all evidence presented to the Special Master was
25 reviewed and considered. For the reasons set forth

1 above, I recommend in this report that the district
2 court enter an order and judgment of no cause for
3 action with regard to Julio Andrial.

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 C E R T I F I C A T E

2

3 I, Theresa O. Mastroianni, a Notary Public and
4 Certified Shorthand Reporter of the State of New
5 Jersey, do hereby certify that the foregoing is a
6 true and accurate transcript of the testimony as
7 taken stenographically by and before me at the time,
8 place, and on the date hereinbefore set forth.

9 I DO FURTHER CERTIFY that I am neither a
10 relative nor employee nor attorney nor counsel of any
11 of the parties to this action, and that I am neither
12 a relative nor employee of such attorney or counsel,
13 and that I am not financially interested in the
14 action.

15

16

17

18

19

20

21

22

23

24

25

Theresa O. Mastroianni
Theresa O. Mastroianni, C.S.R.
Notary Public, State of New Jersey
My Commission Expires May 5, 2010
Certificate No. XI0857
Date: November 18, 2008